

EXHIBIT 5

EXHIBIT 4

SUB-LICENSE AND DELEGATION AGREEMENT

This Sub-License and Delegation Agreement (this “**Agreement**”), dated as of 10/5/2021, 2021, is entered into by and between Gryphon Digital Mining, Inc. (“**Gryphon**”) and Sphere 3D Corp. (“**Sphere**”), and relates to that certain Services Agreement, dated as of September 12, 2021 (the “**MSA**”), by and between Core Scientific, Inc. (“**Core**”) and Gryphon, and Master Services Agreement Order #2 thereunder (“**Order 2**”), attached hereto as Exhibits A and B, respectively. Capitalized terms used herein without definition shall have the meanings assigned to them in Order #2.

WHEREAS, Section 8.d of the MSA, as amended by Order 2, provides that Gryphon is permitted to sub-lease, sub-license, assign, delegate or transfer the MSA and Order 2, or any of its rights and obligations thereunder to Sphere without the prior written consent of Core; and

WHEREAS, Gryphon desires to sub-license and delegate certain rights and obligations under Order 2 to Sphere as set forth herein.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, conditions and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Sub-License and Delegation. Gryphon hereby (i) exclusively sub-licenses to Sphere its rights to access and use the Company Facility pursuant to Order 2 and (ii) delegates to Sphere all of its obligations to make payments to Core pursuant to Order 2. Sphere hereby accepts such sub-license and delegation in all respects.

2. Contingent Assignment. Effective immediately upon the consummation of the Merger (as defined in that certain Agreement and Plan of Merger, dated as of June 3, 2021, by and among Sphere, Sphere GDM Corp. and Gryphon, as amended from time to time (the “**Merger Agreement**”)), all of Gryphon’s rights and obligations under Order 2 shall be automatically assigned to, and assumed by, the Surviving Corporation (as defined in the Merger Agreement), without any further action required by either such party.

3. Termination. This Agreement shall automatically terminate upon the termination of the MSA and/or Order 2 in accordance with their respective terms. In addition, upon any termination of the Merger Agreement by Sphere, Gryphon shall have the right, in its sole discretion, to terminate this Agreement in its entirety (including the sublicense and delegation described in Section 1) upon not less than one hundred and eighty (180) calendar days’ written notice to Sphere.

4. Governing Law. This Agreement shall be construed in accordance with and governed by the Laws of the State of Delaware without giving effect to the principles of conflict of laws.

5. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, and supersedes and replaces all prior or contemporaneous discussions, negotiations, proposals, understandings and agreements, written or oral, as well as any industry custom. Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty other than as expressly set out in this Agreement. This Agreement may be executed in two (2) or more counterparts (and the signature pages may be delivered with ink or electronic signature or by e-mail), each will be deemed an original, but all together will constitute one and the same instrument. This Agreement may be amended only by the written agreement of both parties.

[Signature Page to Sub-License and Delegation Agreement]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

GRYPHON DIGITAL MINING, INC.

DocuSigned by:

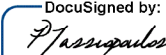


D577A860A12F40D...

By: _____
Name: Robby Chang
Title: CEO & Director

SPHERE 3D CORP.

DocuSigned by:



CA566EB6317F438

By: _____
Name: Peter Tassiopoulos
Title: CEO

Exhibit A

Master Services Agreement

Exhibit B

Master Services Agreement Order #2